

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 8, 2008

IN RE: T. C. S. S.

**Appeal from the Juvenile Court for Wilson County
No. 6063 Charles B. Tatum, Judge**

No. M2007-02249-COA-R3-PT - Filed February 22, 2008

The father of an infant appeals the termination of his parental rights. The trial court found *inter alia* that his rights should be terminated pursuant to Tenn. Code Ann. § 36-1-113(g)(6) due to the fact the father was confined in prison as a result of a criminal act under a sentence of more than ten years imposed when the child was under eight years of age and termination was in the child's best interests, due in part to the child's numerous and serious medical complications and the fact the father had never met the child. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

A. Ensley Hagan, Jr., Lebanon, Tennessee, for the appellant, A.A.S.

Robert E. Cooper, Jr., Attorney General and Reporter; and Amy T. McConnell, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

MEMORANDUM OPINION¹

On August 23, 2006, the Department of Children's Services petitioned to terminate the parental rights of the father of the child who is the subject of these proceedings. The child was nine months old at the filing of the petition and was living with foster parents with whom he had resided since he was released from the hospital after birth. The child first came to the attention of the Department on November 22, 2005, within days after his birth, due to the fact his mother tested positive for marijuana, benzoids, and cocaine at the time of the child's birth. Hours after his birth,

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

the child experienced drug withdrawal symptoms and was transferred to the neo-natal unit at Vanderbilt University Medical Center for methadone treatment. A Petition for Temporary Custody was filed on November 22, 2005. The petition was granted the same day and the Department has had custody of the child ever since. The father was incarcerated when the child was born and has been incarcerated ever since. His whereabouts were unknown at the time, and the Department did not know where he was until months later, on March 31, 2006. The child and father have never met.

On December 8, 2005, when the child was approximately one month old, his father was sentenced to twenty years in the Alabama State Penitentiary after pleading guilty to a June 16, 2005 crime of unlawful possession of a controlled substance, cocaine. The father, who had three prior felony convictions, was qualified for sentencing as a habitual felony offender. At the sentencing hearing, the father waived his right to be considered for probation.

The child has suffered numerous medical problems since birth and will continue to require substantial medical attention for years to come, all due to his mother's extensive drug use during pregnancy. The child suffers from kidney reflux, heart murmur, asthma, and is certified by Tennessee Early Intervention System as developmentally delayed in his fine and gross motor skills. Due to these and other medical complications, he is regularly seen by a cardiologist, an infectious disease specialist, a urologist, his primary care physician, and a pulmonologist.

Due to the father's indigency and incarceration in Alabama, the juvenile court appointed counsel to represent father throughout the proceedings. When the matter came on for trial, the father was unable to attend in person due to the refusal of the correctional officials in Alabama. Arrangements were made, however, for the father to participate in the trial and all related proceedings by telephone, and his attorney was present and representing him at all such proceedings, including trial.

The trial court took the matter under advisement following the trial. Subsequently, an order was entered granting the petition to terminate both parents' parental rights.² Two grounds were cited for terminating the father's rights. One was pursuant to Tenn. Code Ann. § 36-1-113(g)(6), due to the fact the father was confined in prison as a result of a criminal act under a sentence of more than ten years and the child was under eight years of age when the sentence was entered. The other was based on the finding that the father had failed to substantially comply with the permanency plan. The juvenile court also found that termination of the father's rights was in the child's best interests, due in part to the child's numerous and serious medical complications, and the fact the father had never met the child.

On appeal, the father raises several issues. First, he contends the judgment should be vacated because the trial court failed to enter the order within thirty days of the conclusion of the trial as mandated by Tenn. Code Ann. § 36-1-113(k). The failure of the juvenile court to enter the order for a protracted period of time is wholly unacceptable; however, the trial court's failure to comply with the statutory time frame is not a basis for vacating the judgment and remanding the matter for a new

²The mother's rights were also terminated. She did not perfect an appeal.

trial. *See In re M.R.W.*, No. M2005-02329-COA-R3-PT, 2006 WL 1184010, at * 3 (Tenn. Ct. App. May 3, 2006); *In re Thomas P.*; No. E2005-01367-COA-R3-PT, 2006 WL 1491610, at * 7 (Tenn. Ct. App. May 31, 2006).

The next issue asserted by the father is that Tenn. Code Ann. § 36-1-113(g)(6) is unconstitutional. We, however, need not address the merits of this issue because it was not raised in the trial court. *See In re Adoption of E.N.R.*, 42 S.W.3d 26, 32 (Tenn. 2001).

The father next contends that the Department was obligated to unite the child with father's mother. We find no merit to this contention because the father failed to cite any authority to support the contention. Moreover, we find the contention disingenuous due to the fact that not only has he never seen the child, he has not seen his mother since 1994, and his mother has never seen the child.

The father also contends the trial court erred by refusing to grant a continuance he sought on the day of trial. A decision whether to grant a continuance lies within the discretion of the trial court. We review such decisions under an abuse of discretion standard. Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). A trial court abuses its discretion only when it "applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining." *Id.* The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Id.* The father made the request for a continuance, his counsel did not. Moreover, the father was ably represented by counsel at trial and his attorney was prepared for trial. The father has failed to articulate a meritorious reason for a continuance, and we find no cause to question the trial court's decision to deny the requested continuance.

For his final issue, the father contends the evidence was insufficient to prove that terminating his parental rights was in the child's best interest. We find this contention wholly without merit as the record is devoid of any evidence to suggest that it was in the child's best interest to not terminate the rights of a parent the child had never met, who was incarcerated at the child's birth and was currently serving a twenty-year sentence, and where the child desperately needs the loving attention of a caring person who is ready, willing, and able to provide for the child and to transport the child to the many healthcare providers the child so desperately needs.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Department of Children's Services due to the father's indigency.

FRANK G. CLEMENT, JR., JUDGE